

**United States Department of Labor
Employees' Compensation Appeals Board**

JEAN DOTSON, Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Brecksville, OH, Employer**

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**Docket No. 05-908
Issued: September 8, 2005**

Appearances:
Alan Shapiro, Esq.
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 3, 2005 appellant filed a timely appeal of the December 21, 2004 merit decision of the Office of Workers' Compensation Programs, which denied her claim for an emotional condition and a back condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained an emotional condition in the performance of duty; and (2) whether appellant met her burden of proof in establishing that she sustained a back condition in the performance of duty.

FACTUAL HISTORY

On August 30, 2004 appellant, then a 48-year-old medical lab technician, filed an occupational disease claim alleging that on April 3, 2003 she was transported by emergency medical services (EMS) from the employing establishment to an Akron hospital and that her

headaches, stress, fatigue, migraines and lower lumbar problems were caused by factors of her employment.¹ The employing establishment indicated that appellant's pay stopped sometime in July 2004.²

In support of her claim, appellant submitted a treatment note from a physician's assistant dated November 10, 1999 which diagnosed a headache. In treatment notes dated April 3, 2003, a nurse indicated that appellant had a migraine, and also noted that she had a motor vehicle accident (MVA) in 1977, which required a shunt and revisions every 10 years. In a report also dated April 3, 2003, a physician's assistant noted that appellant had muscle spasms in the neck, blurred vision and migraines which affected her vision and caused left-sided weakness. He also noted that appellant had a ventricular shunt, which was placed in 1977. The physician's assistant advised that appellant might have ventricular shunt blockage versus an infection, left-sided weakness and medial gaze vision and paralysis. In an April 21, 2003 report, Dr. Eric J. Rodriguez, Board-certified in internal medicine, diagnosed muscle strain and noted that appellant was moving over the weekend and pulled her lower back. In a report also dated April 3, 2003, Dr. Gary T. Giorgio, Board-certified in emergency medicine, provided a diagnosis of complex migraine. In an April 1, 2004 treatment note, a nurse indicated that appellant came in with complaints of lower back pain and related that she had it for three days. In a separate report dated April 1, 2004, Dr. Rodriguez diagnosed low back pain with reported sciaticiform.

By letter dated September 20, 2004, the Office advised appellant of the additional factual and medical evidence needed to establish her claim. Appellant was advised to submit a statement from her physician addressing the causal relationship between her claimed injury and factors of her federal employment. She was allotted 30 days to submit the requested evidence.

Appellant submitted an attending physician's report dated August 30, 2004 from Dr. Marcie Groesbeck, a Board-certified family practitioner, who diagnosed situational stress and agitated depression. She checked the box "yes" in response to whether she believed appellant's condition was caused or aggravated by an employment activity and related that appellant believes her "work volume is excessive." Dr. Groesbeck also submitted a blank work restriction form, employee health medical notes from October 11 to November 2, 1998 and an informational packet from the Veterans Administration.

Appellant submitted an undated statement noting that she hurt her back while she was moving. She explained that she fell while going down the stairway, and that her family would not let her help with moving due to her knee and back conditions. Appellant attributed the fall, however, to her right knee condition, which was due to an on-the-job injury in 1998.

A magnetic resonance imaging (MRI) scan dated April 7, 2004, was read by Dr. Adrian G. Krudy, a Board-certified diagnostic radiologist, who diagnosed multilevel

¹ The record reflects that appellant had a prior claim for a fall in 1998 which was accepted for a sprained right ankle and left knee. This claim was closed in March 1999. File No. 090445945. The record also indicates this claim was retired since January 25, 2002.

² The form is left blank with regard to the date appellant stopped work.

spondylotic changes of the lumbar spine. He related that appellant had a history of an MVA in 1994.

By letter dated September 28, 2004, Donald Sambrook, an injury compensation specialist with the employing establishment controverted the claim.

The Office subsequently received hospital admission forms dated April 3, 2003, an April 3, 2003 treatment note and electrocardiogram from Dr. David E. Custodio, Board-certified in emergency medicine, which diagnosed a migraine, progress notes dated August 30, 2004 from Dr. Groesbeck, who assessed work-related stress, which was improving with counseling, an undated order form, a list of treatment dates from Dr. James Bressi, an osteopath.

By decision dated December 21, 2004, the Office denied appellant's claim, finding that the evidence was insufficient to establish that the events occurred as alleged. The Office found that appellant had a work-related injury in 1998 and sustained an injury to her right ankle and knee, which was accepted. The Office found that appellant had not shown that she was taken to the hospital for migraines due to stress or fatigue at work, that she did not show that she had low back pain, was fatigued or had migraines and stress due to work. The Office found that appellant had not established that she sustained an injury arising in the performance of duty.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

Workers' compensation law does not apply to each and every illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specifically assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act.⁶ On the other hand the disability is not covered

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ 5 U.S.C. §§ 8101-8193.

where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁷

ANALYSIS -- ISSUE 1

By decision dated December 21, 2004, the Office denied appellant's claim. Regarding appellant's claim for an emotional condition, the Office found that appellant had not shown that she was taken to the hospital for migraines, stress or fatigue arising from her federal employment.

The Board notes that appellant has not provided a factual statement identifying those employment factors she believes to have caused or contributed to her migraines or offer any evidence explained how or why her migraines were related to her federal employment. The only statement from appellant regarding her migraines is an indication on her claim form that she was transported by EMS from work and that she attributed her condition to her employment. However, appellant did not identify those factors of her employment which she believed caused her migraines. This is important as a claimant's burden includes the submission of a detailed description of the employment factors or conditions which he or she believes caused or adversely affected the condition or conditions for which compensation is claimed.⁸ Appellant did not describe any specific factors of her employment as a lab technician that she believes caused her migraines. Appellant has not submitted sufficient evidence to support her allegations, as noted above. Therefore, appellant has not met her burden to identify a compensable employment factor with respect to her migraines.

Also regarding her allegations of stress or fatigue, she did not list any factors of her employment in her narrative or explain how she believed her stress or fatigue was caused by specific duties in her employment. As noted above, a claimant's burden includes the submission of a detailed description of the employment factors or conditions which he or she believes caused or adversely affected the condition or conditions for which compensation is claimed.⁹ While Dr. Groesbeck attributed appellant's stress and depression to "excessive" work volume, appellant has not provided any specific information on what aspect of her work volume was excessive and there is no other evidence documenting such assertion by the physician.¹⁰ Therefore, appellant had not established a compensable factor.

The Board notes that, since appellant has not established a compensable work factor, the medical evidence will not be considered with regard to the emotional condition aspect of the claim.¹¹

⁷ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 126 (1976).

⁸ *John Polito*, 50 ECAB 347 (1999).

⁹ *Id.*

¹⁰ An allegation of overwork must be substantiated by sufficient factual information to be a compensable factor of employment. See *Bobbie D. Daly*, 53 ECAB 691, 694-95 (2002).

¹¹ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

LEGAL PRECEDENT -- ISSUE 2

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹²

ANALYSIS -- ISSUE 2

In the December 21, 2004 decision, the Office also denied that appellant's back condition was causally related to her employment.

Appellant has alleged that her back condition arose as a result of an accepted work-related injury back in 1998 which was accepted for a right ankle sprain and left knee sprain. She explained that, while moving, she fell while going down a stairway, attributing the fall as a result of her employment-related knee condition, which occurred in 1998. However, the file before the Board pertains to her claim for occupational disease in 2003. The file relating to the 1998 injury claim is not before the Board.¹³ The record reflects that appellant was at home and engaged in the nonwork-related activity of moving her personal effects when she fell while going down a stairway. She was not on duty and has not shown that moving personnel effects was part of her employment. Appellant's burden of proof in establishing her occupational disease claim includes submission of a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition. Here, appellant has not asserted that any employment duties caused a back injury. Instead, she has only identified an

¹² *Victor J. Woodhams, supra* note 5.

¹³ Regarding appellant's claim that her back condition is a recurrence of or consequential to her prior injury, she should contact the Office with regard to filing an appropriate form to initiate appropriate development under that claim.

activity occurring at home, when off duty, as the cause of her condition. The activity of moving personnel effects at home does not come within the course of her employment.¹⁴

Additionally, appellant provided reports dated April 21, 2003 and April 1, 2004 in which Dr. Rodriguez, provided a diagnosis of muscle strain. His explanation was that appellant was moving over the weekend and pulled her lower back. Dr. Rodriguez did not provide any opinion that appellant's back condition occurred in the course of performing her federal employment duties or was causally related to factors of her employment. Other medical reports do not attempt to explain how her back condition was caused by specific employment factors. As appellant has not identified employment factors alleged to have caused her back condition and as she has not submitted any medical evidence supporting that employment factors caused her back condition, she has not met her burden of proof in establishing her claim for a new occupational disease.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained an emotional condition or back condition in the performance of duty.

¹⁴ The Board has stated that, in the compensation field, to occur in the course of employment, in general, an injury must occur: (1) at a time when the employee may reasonably be said to be engaged in his or her master's business; (2) at a place where he or she may reasonably be expected to be in connection with the employment; and (3) while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto. *Bradford N. Reed*, 56 ECAB ____ (Docket No. 04-1768, issued March 25, 2005).

ORDER

IT IS HEREBY ORDERED THAT the December 21, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 8, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board